

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:06CR124
)	
v.)	
)	
ERIC MILLER,)	ORDER
)	
Defendant.)	
_____)	

Before the court is the notice of appeal (Filing No. [60](#)) filed by the defendant, Eric Miller. The defendant now appeals the court's denial (Filing No. 58) of his motion to reduce his sentence pursuant to the crack cocaine Amendment 706, which he filed on October 10, 2008 (Filing No. [54](#)). In Filing No. 58, this court dismissed the defendant's motion for the reasons stated on the record.

The defendant's notice of appeal is untimely. See Fed. R. App. P. 4(b). This court denied the defendant's motion (Filing No. [54](#)) on November 6, 2008 (Filing No. 58). The defendant did not file his notice of appeal (Filing No. [60](#)) until February 23, 2009.

Furthermore, the defendant has not stated that his failure to file a timely notice of appeal is due to excusable neglect or good cause. See [United States v. Petty, 82 F.3d 809, 810 \(8th Cir. 1996\)](#) (concluding that the district court has the discretion to determine "whether this is a case of excusable neglect, and if so, whether [the defendant's] time for filing a notice of appeal should be extended."). Because the defendant has not shown any evidence of excusable neglect, this court concludes there is no reason to extend his time for filing a timely notice of appeal. Consequently, the court declines to issue a certificate of appealability.

SO ORDERED.

DATED this 2nd day of March, 2009.

BY THE COURT:

s/ Joseph F. Bataillon

Chief District Judge